

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY  
Civil Action No. 83-2264(CA)

-----  
ANTONIO CIPOLLONE, individually,  
and as Executor of the Estate  
of Rose D. Cipollone,

Plaintiff,

-vs-

LIGGETT GROUP, INC., a  
Delaware Corporation; PHILIP  
MORRIS, INCORPORATED, a  
Virginia Corporation; and  
LOEW'S THEATERS, INC., a  
New York Corporation,

Defendants.  
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TRANSCRIPT OF  
PROCEEDINGS

Newark, New Jersey

February 19, 1988

A.M. Session

R E P O R T:

HONORABLE H. LEE SAROKIN  
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

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Attorneys for the Defendant, Philip Morris.

Pursuant to Section 753 Title 28 United States Code,  
the following transcript is certified to be an accurate  
record as taken stenographically in the above-entitled  
proceedings.

*Joanne M. Houston, CSR*

PHYLLIS T. LEWIS, C.S.R.

Official Court Reporter - United States District Court  
P.O. Box 23538, Newark, New Jersey 07101

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A P P E A R A N C E S: (Continued)

GREENBAUM, ROWE, SMITH, RAVIN, DAVIS &  
BERGETZIN, ESQS.,

BY: ALAN S. NAAR, ESQ.,

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Attorneys for Defendants,

Philip Morris and Lorillard.

1 Mr. Edell.

2 MR. EDELL: I would like now to read the deposition  
3 of Dr. Walter E. Carroll.

4 THE COURT: Members of the jury, I may have  
5 explained this to you before, but let me do it again.

6 Frequently, and the rules of Court permit,  
7 utilization of depositions instead of having the witness  
8 here and that usually is done either because, as in one  
9 case, one of the witnesses was deceased or also is permitted  
10 where a witness is beyond the subpoena power of the Court  
11 and cannot be compelled to attend.

12 So in those instances we permit the deposition to  
13 be utilized in lieu of their being present here in court.

14 Again, you should consider it as you would  
15 testimony of any other witness.

16 MR. EDELL: I have Mr. Zuckoff here who would acc  
17 as Dr. Carroll.

18 THE COURT: The same understanding that this is not  
19 really Dr. Carroll, but someone reading his answers.

20 MR. EDELL: You can take the witness stand.

21 THE COURT: I have a feeling Dr. Carroll is a  
22 little older.

23 (The following is deposition testimony read of Dr.  
24 Carroll.)

25 Q What is your date of birth?

1 A August 17, 1902.

2 THE COURT: I was right.

3 Q Are you a licensed physician?

4 A Yes.

5 Q In which states?

6 A Massachusetts and I think about 12 others. I really  
7 haven't kept that in mind specifically.

8 Q Okay.

9 Let me go through certain facts and tell me whether  
10 I am right, instead of you trying to recall specific dates.

11 You went to Jefferson Medical School in  
12 Philadelphia?

13 A Yes.

14 Q And you graduated in 1928?

15 A Yes.

16 Q Did an internship at St. Mary's in Philadelphia?

17 A Yes.

18 Q 1928 to 1930?

19 A Yes.

20 The second year was not internship. The second  
21 year of that date I was chief resident at the hospital.

22 Q 1930 to 1931, you were a resident in the New York Eye  
23 and Ear Infirmary?

24 A Yes.

25 Q You were a surgeon at St. Elizabeth's Hospital?

- 1 A Yes.
- 2 Q And you had a privilege at the Boston Dispensary. Is
- 3 that correct?
- 4 A I did, because I was a teacher there.
- 5 Q You were an associate surgeon in otolaryngology at the
- 6 Mass. Eye and Ear Infirmary?
- 7 A The last ten years I was an attending physician there.
- 8 Q When you say "last ten years" --
- 9 A Of my appointment.
- 10 Q When was that, sir?
- 11 A I finished the active service in 1962, I think.
- 12 Q You were an instructor in otolaryngology at Harvard
- 13 Medical School?
- 14 A Third year medical student.
- 15 Q When was that, sir?
- 16 A I will have to say in the '50s. I'm not quite sure of
- 17 the exact date, roughly eight to ten years.
- 18 Q You were an instructor of otolaryngology in Tufts
- 19 Medical Center?
- 20 A Yes.
- 21 Q When was that?
- 22 A At the same time.
- 23 Q You had attending privileges at Mass. General?
- 24 A That was through the Eye and Ear Infirmary.
- 25 Q What is Pratt Diagnostic Clinic?

1 A That was the name then of where we taught the Tufts  
2 students. It now has a different name.

3 Q You are board certified in otolaryngology?

4 A Yes.

5 Q Since?

6 A 1936.

7 MR. EDELL: 1936, that was my line.

8 MR. ZUCKOFF: Yes.

9 Q Have you limited your practice to otolaryngology?

10 A I do some eye work, too.

11 Q Do you still practice?

12 A No.

13 Q When did you stop practicing?

14 A Roughly five years ago.

15 Q Do you recall doing work for Arthur D. Little?

16 A Yes.

17 Q What is your recollection of the first time Arthur D.  
18 Little contacted you?

19 A It was -- as I recall, I never had much active contact  
20 with him, to tell the truth. It was a telephone call after  
21 having been suggested by a physician who was going to do  
22 this type of work, but didn't care to do it because he was  
23 too busy otherwise and they called me on the telephone at  
24 his suggestion.

25 Q What was your understanding of the work that you were

1 being asked to perform for Arthur D. Little?

2 A To just do routine examinations of nose and throat of  
3 people that they would send to me.

4 Q Did they tell you the purpose of your examinations?

5 A They didn't mention about any purpose. No, it was just  
6 what I would see on examination of nose and throat.

7 Q Who did you speak with in regard to setting up this  
8 procedure of examination?

9 A It was a lady there who called me on the telephone, to  
10 tell you the truth. I forgot her name.

11 Q Geneva Gray?

12 A That's the name, yes.

13 Q Do you understand it was for the purposes of seeing what  
14 affect, if any, cigarette smoking had on individuals?

15 A That was mentioned to me, not very seriously, you might  
16 say, but just mentioned to me. I was just to examine them.

17 Q When you say "to examine them," what was the nature of  
18 your examination, sir?

19 A I examined the -- specifically, the nose and throat of  
20 all these people that I had to see and see what changes were  
21 present, if any. And if there was any changes, we went  
22 along in various examinations, that's all.

23 Q Did the examinations include any examination of their  
24 lungs?

25 A No.

1 Q Why was that?

2 A I was specifically told just the nose and throat.

3 MR. COHN: Your Honor, I request --

4 MR. EDELL: I'll read it.

5 THE COURT: Do I have a copy of this deposition?

6 MR. KEARNEY: I have an extra copy.

7 THE COURT: You don't mind? Can you get along  
8 without it?

9 MR. KEARNEY: I certainly can, Judge.

10 MR. EDELL: We're at page 13, your Honor, line 20.

11 Q Did you inquire as to whether or not they wanted you to  
12 examine their lungs?

13 A I did not inquire, but on several occasions on several  
14 people their lungs were X-rayed, just for my own  
15 information.

16 Q But did you do any type of --

17 A No, on the lungs, no.

18 Q -- investigation?

19 A No, not at all.

20 Q That was not your field of expertise?

21 A No.

22 Q Was pulmonary medicine a recognized specialty in the  
23 1950s?

24 A I suppose there were a few fellows in it, I really don't  
25 know.



1 Q Do you recall this relation with Arthur D. Little  
2 beginning about January of 1952?

3 A I -- if somebody had asked me previously what year it  
4 was, I would have just given an odd date. I don't know, but  
5 if you think it was that, I will say so.

6 Q Let me show you a letter you wrote to Arthur D. Little  
7 in August of 1952. We will mark it as Carroll exhibit one.

8 MR. EDELL: It's in the jury binder at page one,  
9 your Honor.

10 MR. COHN: No objection.

11 THE COURT: The jury may turn to it then. Page one  
12 after Carroll.

13 MR. EDELL: Plaintiff's exhibit 2315, your Honor.

14 THE COURT: It follows the Carroll tab, correct?

15 MR. EDELL: Correct.

16 Q First let's start with the signature.

17 Is that your signature?

18 A That sure looks like it.

19 Q Take a look at the letter and see if it refreshes your  
20 recollection as to when, approximately when you began your  
21 relationship with Arthur D. Little.

22 A I guess that would tie in with it all right.

23 Q I'm sorry?

24 A I guess that would tie in with it all right.

25 Q Let me show you another document.

1 MR. COHN: Your Honor, this is one of the documents  
2 I mentioned earlier.

3 THE COURT: What is it? What's the document?

4 MR. EDELL: It's P-2316. It's page two of the jury  
5 binder.

6 MR. COHN: I request that the jury not turn to it.

7 THE COURT: I'll see counsel.

8 The jury should not turn to it yet.

9 (The following takes place at sidebar.)

10 MR. EDELL: Can I just get the transcript for a  
11 second?

12 THE COURT: Yes.

13 What's the objection?

14 MR. COHN: The objection, your Honor, is that it  
15 reflects a Federal Trade Commission proceeding against  
16 Liggett. And I would like to have the opportunity to argue  
17 that that Federal Trade Commission proceeding is irrelevant,  
18 should not be mentioned in this case.

19 THE COURT: Isn't this an affidavit that this  
20 witness filed?

21 MR. EDELL: Yes.

22 MR. COHN: Yes, your Honor.

23 THE COURT: So what does that have to do with it?

24 MR. COHN: Again, it was used to refresh his  
25 recollection. The man was at this time, I think, something

1 like 83 years old.

2 THE COURT: What's wrong with that? That's my  
3 question.

4 MR. EDELL: He didn't say --

5 MR. COHN: What's wrong with it, your Honor, that  
6 the heading -- if we could blank this off, I have no  
7 problems with it at all.

8 THE COURT: I see.

9 MR. COHN: That's my problem with it, your Honor.  
10 I have no problems with anything in the affidavit. I'm  
11 trying to suggest that until your Honor rules on my FTC  
12 objection, we proceed on that basis. I have no objection to  
13 the -- all he says is you have the affidavit is right.

14 THE COURT: Is he asked --

15 MR. EDELL: It's past recollection recorded,  
16 because he doesn't --

17 THE COURT: Is he asked whether he filed an  
18 affidavit in that proceeding?

19 MR. EDELL: He says, that looks like my signature.

20 Do you recall executing, you don't remember that?

21 I don't recall that. I don't recall that.

22 Would you take a look at the affidavit, this one?

23 Yes.

24 MR. COHN: He says he doesn't recall it at all.

25 THE COURT: My question is, do you identify the

1 caption in the question?

2 MR. EDELL: No, I don't.

3 MR. COHN: Yes. He talks about in marking --

4 MR. EDELL: I'm sorry, yes, I do.

5 Do you recall executing an affidavit for the  
6 purpose of FTC investigation with respect to the  
7 examinations which you did?

8 THE COURT: How can I keep that out if that's the  
9 foundation for it?

10 MR. NORTHRIP: He testifies he doesn't recall it,  
11 no.

12 MR. EDELL: He says no, that could be, but I don't  
13 recall this at all. He identifies his signature on it.

14 MR. COHN: All I'm saying --

15 MR. EDELL: I was reading that to Mr. Northrip. I'm  
16 sorry.

17 THE COURT: If that's the way it was called to his  
18 attention and that's the way he identifies it and he says  
19 it's his signature, I don't know I can bar it.

20 MR. COHN: Your Honor, I have no objection to the  
21 affidavit if we just knock out the heading of it, which I  
22 think would be appropriate at this time. Mr. Edell can read  
23 any part of the affidavit he wants to. We'll let it in,  
24 just without the heading.

25 And if I lose on the FTC, it will all come in. I

1 would like the opportunity to be heard on that and we'll  
2 give you the memo before lunch.

3 THE COURT: That's going to happen before now? How  
4 can they look at it without looking at the caption?

5 MR. COHN: Well, they could -- Mr. Edell could read  
6 it to him. Then they could read it on Tuesday if I love.

7 THE COURT: Hasn't that already been asked about a  
8 Federal Trade Commission complaint against Liggett & Myers?

9 MR. EDELL: Yes.

10 THE COURT: They know one exhibit.

11 MR. COHN: Your Honor, it came up in a response to  
12 a question unsolicited.

13 THE COURT: I know, but the jury's heard it. To  
14 see the caption --

15 MR. COHN: Once?

16 THE COURT: Well, I'll overrule the objection.

17 (The following takes place in the presence of the  
18 jury.)

19 MR. EDELL: I believe we're at page 15, line 15 --  
20 or line 16.

21 Q Let me show you another document. Maybe this will  
22 further jog your memory.

23 Mark it as Carroll, two, please.

24 MR. EDELL: Your Honor, this is plaintiff's exhibit  
25 2316, it's in the jury binder at page two.

1 THE COURT: The jury may turn to page two.

2 Q Doctor, I'm going to ask you to take a look at the  
3 exhibit marked Carroll two for identification. It appears  
4 to be an affidavit executed by you on November 13, 1962.

5 If you take a look at the third page, do you  
6 recognize that to be your signature, sir?

7 A That looks like my signature.

8 Q Do you recall executing an affidavit for the purpose of  
9 the Federal Trade Commission investigation with respect to  
10 the examinations which you did?

11 A Would you repeat that? I don't recall that.

12 Q You don't remember that?

13 A I don't recall that at all.

14 Q Would you take a look at the affidavit and see if it  
15 refreshes your recollections in that regard, sir?

16 A This one?

17 Q Yes.

18 A Well, that could be.

19 Q I'm sorry?

20 A That could be, but I don't recall this at all.

21 Q Are the facts as they are set forth in the affidavit  
22 true and accurate, to the best of your recollection?

23 A I would say so, yes. I recall this part of it  
24 specifically. Yes. Places I was associated with is what  
25 that has to do with.

1           Some of these I wouldn't be sure of, to tell the  
2 truth.

3 Q Do you have any reason to believe any of the facts in  
4 the affidavit are not correct, sir?

5 A I guess they're not incorrect, yes.

6 Q Why don't you continue reading at line 19.

7 A I guess I can put it that way. That as far as I know, I  
8 can't disagree to it.

9 Q As far as you are aware, sir, you know of no facts which  
10 would suggest to you that the statements in Carroll two are  
11 incorrect, correct?

12 A That's the way I would put it.

13 Q Okay.

14           Were you asked to do this investigation with an eye  
15 to ascertain whether or not there were any precancerous  
16 changes in these individuals?

17 A I don't think so at all.

18 Q Was the subject of cancer ever discussed were you?

19 A No.

20           MR. COHN: For completeness I would ask that Page  
21 19, line 21 through 20, line 3, be read.

22           THE COURT: 293?

23           MR. COHN: 19, 21, 20, 3. In other words, just to  
24 the top of the next page.

25           MR. EDELL: They had two.

1 Through line 2.

2 Q Was it your job simply to see whether or not there was  
3 any type of irritation?

4 A More if there were any changes.

5 Q What type of changes?

6 A Irritations would be one, growths would be another.

7 Q During the period of time prior to 1952 that you were  
8 practicing, have you ever seen any -- sorry -- have you ever  
9 seen any cancerous lesions?

10 A Indeed, I did.

11 Q When you started doing this work for Arthur D. Little  
12 back in the 1950's --

13 MR. COHN: Excuse me, that was not part of the  
14 designation but as long as we did that, we might as well  
15 read the whole page.

16 MR. EDELL: I have it highlighted in blue, but I  
17 will.

18 MR. COHN: "Indeed, I did" is where the doctor  
19 stopped.

20 Q I will continue -- on what sites did you see these types  
21 of cancers?

22 A I saw them specifically in the tonsil area, in the ear,  
23 and in the larynx.

24 Q And did you ever ascertain the etiology of those  
25 cancers?



1 A (No response.)  
2 Q The cause of the cancers?  
3 A I can't remember that.  
4 Q When you had started doing this work for Arthur D.  
5 Little back in the 1950's were you aware that cigarette  
6 smoking had been associated with cancer?  
7 A I had heard it mentioned.  
8 Q When you say you heard it mentioned --  
9 A I hadn't heard that specifically was a cause, although  
10 there was a discussion at that time.  
11 Q When you say "a discussion" -- there was information,  
12 literature?  
13 A Yes and no.  
14 Q There was information in the medical and scientific  
15 literature both that it may be a cause and both it may not  
16 be a cause?  
17 A That would be about the way to put it.  
18 Q Do you remember the work that was done by Dr. Wynder?  
19 A Never heard of him.  
20 Q Prior to 1952 you were aware that the use of tobacco had  
21 been associated with different types of cancers?  
22 A I think it was mentioned, but that's as far as I had  
23 gone on it.  
24 MR. COHN: Your Honor, if we can read from Page 21,  
25 line 20 to the top of the next page through line 6.

1 MR. EDGEL: I will read it.

2 Q When were you first aware that there was at least an  
3 issue as to whether or not the use of tobacco resulted in  
4 some type of tumors?

5 A Oh, I couldn't answer that. I don't know.

6 Q Was it ten years, fifteen years, twenty years before you  
7 did this work at Arthur D. Little?

8 A I suppose I had heard it mentioned, but I couldn't say  
9 for sure.

10 Q Did you ever formulate an opinion as to whether or not  
11 cigarette smoke was or was not an irritant?

12 A I didn't formulate an opinion.

13 MR. COHN: Wait a second.

14 Q You never have?

15 A No.

16 MR. COHN: Excuse me, your Honor. I believe  
17 that -- there was an intervening question left out and  
18 answered at the bottom of Page 23 and the top of 24.

19 MR. EDGEL: Let's go back to the bottom of 23.

20 Q Can you answer the question, sir?

21 A I guess no.

22 MR. COHN: Can we have the question again, your  
23 Honor?

24 THE COURT: Starting at 10.

25 Q Did you ever formulate an opinion as to whether or not

1 cigarette smoke was or was not an irritant?

2 Can you answer the question, sir?

3 A I guess no.

4 Q Then you can continue.

5 A I didn't formulate an opinion.

6 Q You never have?

7 A No.

8 Q Do you recall that you were to examine the ear, nose,  
9 throat and accessory organs of these individuals?

10 A You will have to tell me what you mean by accessory  
11 organs?

12 Q Why is that important, sir?

13 A Well, you may see me on something that I have no  
14 knowledge of and I would say yes or no.

15 Q Well, what is your understanding of the use of the term  
16 accessory organs?

17 A Well, the lungs for instance. Any part of the pulmonary  
18 apparatus or the stomach even and I would have no opinion on  
19 those things.

20 Q When you did the work for Arthur D. Little, they  
21 specifically identified for you what term was meant by  
22 accessory organs?

23 A I don't remember.

24 Q Do you recall what your understanding was of the use of  
25 the phrase accessory organs in terms of your examination in

1 this matter?

2 A I don't know. I didn't examine any accessory organs

3 that I know of.

4 MR. COHN: Your Honor, 4 --

5 MR. EDELL: I will read it. Page 29, line 22.

6 Q Okay. Do you recall that the use of the phrase

7 accessory organs referred specifically to the eustachian

8 orifice, the sinus and larynx?

9 A I would agree with that.

10 Q You don't remember writing a report?

11 A I don't remember any of those things, no.

12 Q Do you remember doing the examinations?

13 A I remember seeing people, yeah.

14 Q You remember that you were doing the work for Arthur D.

15 Little, correct?

16 A Yes.

17 Q But you don't remember ever preparing any report?

18 A I don't recall these reports at all to tell you the

19 truth.

20 Q All you remember about the work that you did for Arthur

21 D. Little is that you examined some patients?

22 A Yes.

23 Q Do you remember anything about your findings?

24 A Not at this stage of the game.

25 MR. EDELL: Continuing Page 34.

1 Q Did you know that the work that you were doing for  
2 Arthur D. Little was going to be used in advertising?

3 A I did not.

4 Q Did you ever become aware of the fact that it was used  
5 as a basis for an advertising campaign?

6 A Not that I know of, no.

7 MR. EDELL: Your Honor, we will now deal with an  
8 exhibit which has been marked P-4300. It is in the jury  
9 binder at Page 5.

10 THE COURT: Counsel advise whether there is any  
11 objection.

12 MR. COHN: Same objection I made before.

13 MS. WALTERS: This is already in evidence.

14 THE COURT: It is?

15 MR. COHN: Which one are we talking about.

16 THE COURT: P-35.

17 MR. COHN: No objection. Thought it was another  
18 exhibit.

19 MR. EDELL: Can the jury turn to it?

20 THE COURT: Yes. Jury can turn to Page 5.

21 Q To the best of your recollection no one in Arthur D.  
22 Little told you that the work that you were doing for them  
23 would be used for the basis of an advertising campaign,  
24 correct?

25 A That is correct.

1 Q You did know that the test was being performed to see  
2 what effect cigarette smoking had on people though, correct?

3 A That was the purpose, I think, of the thing.

4 Q The purpose of the --

5 A Examination.

6 Q Did you know how many cigarettes these patients were  
7 smoking?

8 A Not specifically. No, I did not.

9 Q When you say not specifically --

10 A I don't know whether they had four or 40 or two or one.

11 Q Is there a reason why you didn't take that type of a  
12 smoking history?

13 A Not particularly.

14 Q You knew that they were all smoking, though?

15 A I think that is correct, yes.

16 Q Upon what fact did you base that assumption?

17 A Asking them.

18 Q Asking the patients?

19 A Yes.

20 Q Dr. Carroll, I am going to show you Exhibit 5A through D  
21 and ask you if you can recognize those, sir? Take a look at  
22 all of them.

23 MR. EDELL: And these are in the jury binder, Pages  
24 6, 10, 14, 18, your Honor.

25 MR. COHN: This is the exhibit that I have the same

1 objection to, your Honor, as the one before. As you will  
2 see --

3 THE COURT: What pages? 6? Mr. Edell, 5, what?

4 MR. EDELL: 5, 10, 14 and 18, Judge. Plaintiff's  
5 Exhibit 2318, 2319, 2320 and 2321, respectively.

6 THE COURT: Is that the only basis for the  
7 objection?

8 MR. COHN: Yes.

9 THE COURT: Objection overruled. I will permit the  
10 jury to refer to those.

11 Page 6 is the first.

12 MR. EDELL: Yes, Judge.

13 THE COURT: Jury may turn to Page 6.

14 Q Take a look at all of them.

15 A No. What is the question? When you say recognize them,  
16 could you explain more what you mean by that?

17 Q Do they look familiar to you, sir?

18 A That's the type of examination I might conduct, yes.

19 Q Do they appear to be copies of office records prepared  
20 by you?

21 A They could be.

22 Q Are those records prepared in the format that you  
23 prepared your office records?

24 A That's the routine that I would follow.

25 Q When you say routine, do these records appear to be in

1 the format in which you maintained your office records back  
2 in the 1950's?

3 A That's what I say, it's the routine I follow.

4 Q Do you have any reason to believe that you deviated from  
5 your routine in the examination of patients referred to you  
6 by Arthur D. Little?

7 A No, I don't think so.

8 Q Did you understand that your examinations were going to  
9 be used as part of a study by Arthur D. Little to conclude  
10 that cigarette smoking did not have an adverse effect on  
11 people who smoked?

12 A No.

13 Q You did not consider yourself to be an expert on the  
14 effects of cigarette smoking on human beings in 1952?

15 MR. COHN: What page?

16 MR. EDELL: Page 50.

17 MR. COHN: You skipped some.

18 A I couldn't say that that was true.

19 MR. EDELL: Turning now to page -- I think we were  
20 missing some pages on this, your Honor.

21 Excuse me one second.

22 Excuse me one second, Judge.

23 May I borrow one from the defendants?

24 MR. COHN: Sure.

25 What page are we on, Mr. Edell?



1 MR. EDELL: Page 42, I believe.

2 THE COURT: You stopped at 52. Your last one  
3 was --

4 MR. COHN: We were up to 52, I think.

5 MR. EDELL: I want to make sure I didn't miss  
6 anything in the interim.

7 MR. COHN: Can we exchange it? These have my notes  
8 on --

9 MR. EDELL: I won't know the designated portions.

10 MR. COHN: Do you mind if I stand here.

11 MR. EDELL: You can sit down. I will use this.

12 MR. COHN: What page?

13 MR. EDELL: Page 45.

14 THE COURT: If you want time to check we can break  
15 for lunch.

16 MR. EDELL: Sorry.

17 THE COURT: We will break for lunch and resume at  
18 2:15.

19 All rise for the jury, please.

20 (Jury excused.)

21 (Luncheon recess.)

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DANIEL PROVOST

By Mr. Edell

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By Mr. Cohn

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Deposition of Walter E. Carroll read - pg. 2559

Deposition of William Bates, Jr. read - pg. 2587

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